

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

IN RE MARRIAGE OF MICHAEL S. TRUITT,	)	
	)	No. 61423-1-I
	)	Consolid. w/No. 62591-8-I
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
ERIN DUNCAN TRUITT,	)	
	)	
Appellant.	)	
	)	FILED: <u>August 3, 2009</u>

— Schindler, C.J. — This appeal arises from a decree of dissolution and property settlement entered when the trial court granted Michael Truitt’s motion to enforce a CR 2A stipulation and settlement over Erin Truitt’s objection. We conclude that the trial court exceeded its authority because the parties’ agreement includes a provision that any dispute over the terms of the agreement or the documents necessary for court approval would be submitted to binding arbitration. We reverse the order granting Michael’s motion to enforce the CR 2A agreement, reverse the award of \$2,937.50 in attorney fees to Michael, vacate the findings of fact, conclusions of law and decree of dissolution, and remand for further proceedings consistent with this opinion.

In May 2006 Michael filed a petition to dissolve the parties' marriage. In April 2007 Michael and Erin participated in mediation and entered into a CR 2A stipulation and agreement that resolved many of the issues, including assignment of their debts, each person's percentage share of the community property, the terms for the sale of their home, maintenance, and the division of their retirement assets. They did not resolve the division of certain stock options and bonus compensation Michael received from his employer because he had not verified the value of those assets. Michael's attorney was to draft the final documents, and Erin's attorney was to present them to the court for entry. The agreement provided that any disagreements over the terms of the stipulation or documents necessary for court approval would be submitted to the mediator, who would resolve the disputes by binding arbitration.

In June 2007 Michael's attorney sent Erin's attorney proposed final papers ("Separation Contract.") Following a telephone conference, in July 2007 Michael's attorney sent a revised version of the final papers. The parties were unable to agree on several issues, including the value of Michael's bonus and stock options. They agreed to submit the unresolved issues to arbitration.

On August 28, 2007, they participated in arbitration. The arbitrator issued his award the following day, resolving a host of unresolved questions relating to spousal maintenance, unpaid bills and obligations, allocation of the parties' interests in certain assets, health and auto insurance, and medical expenses. The

arbitrator determined that the information Michael provided to verify the value of his bonus and stock options was insufficient and required Michael to provide further documentation within two weeks.

On September 26, 2009, the arbitrator conducted a follow up conference and issued a supplemental award with interlineations that resolved the details of many of the remaining issues. The award set forth that counsel agreed Erin was still entitled to verification of the value of Michael's stock options and that Michael would provide the information within fourteen days. The award also addressed the parties' respective requests for an award of attorney fees. Michael argued that Erin had raised many frivolous or inconsequential issues. Erin argued that Michael had delayed preparation of the final papers and he had failed to provide the required verification of value on certain assets. The arbitrator found that of the \$6000 of fees accrued in the arbitration phase, \$1000 was attributed to Erin raising requests that were outside the agreement or would have the effect of modifying it. The remaining \$5000 was for the parties' mutual benefit or occasioned by the parties' conduct and as such should be paid from the proceeds of the home sale.

In October 2007, Michael sent Erin a draft of the final papers. Erin took the position that in several respects Michael's draft did not comport with the settlement agreement. Approximately a month later, she returned the papers to Michael with proposed revisions and suggested sending the parties' respective

proposals to the arbitrator for a final decision. Michael responded that Erin's revisions were unacceptable and amounted to attempts to modify the agreement. He refused to return to arbitration and insisted Erin sign the papers as drafted.

On January 14, 2008, Michael filed a motion to enforce the April 2007 CR 2A stipulation and agreement as clarified by the August 2007 and September 2007 arbitrator awards and for entry of a decree of dissolution. Michael asserted that both parties bore some responsibility for the initial delay, but that Erin was now delaying entry of final papers so that she could stay on his health insurance. Attached to the motion was Michael's draft of the final papers, which he asserted accurately reflected the stipulation and agreement and subsequent arbitration awards. Michael sought \$1000 of attorney fees.

When Michael filed the motion Erin was out of the country on vacation and inaccessible. On January 18, Erin's attorney filed a notice of her inability to respond, a motion to continue the hearing for seven days, and a motion to shorten the time to consider her motion for a continuance so that it could be ruled on before the hearing.

On January 23, the trial court denied the motion to shorten time and the motion for a continuance on the ground that the issues were not new and were controlled by the April 2007 CR 2A agreement. The court also granted Michael's motion to enforce the CR 2A agreement and entered Michael's proposed final orders and findings of fact and conclusions of law and a decree of dissolution.

The court awarded Michael attorney fees of \$1000.

On February 4, Erin filed a motion for reconsideration primarily on the ground that the final papers did not accurately reflect the parties' agreement and the arbitration awards. The trial court denied the motion. Erin filed a notice of appeal of the final orders and the order denying reconsideration.

Subsequently, through new counsel, Erin filed a motion to vacate the January 23, 2008 orders enforcing the CR 2A agreement, the decree of dissolution, and property agreement and the award of attorney fees. Erin reiterated that Michael's papers were contrary to the arbitration agreement in several respects and that the disputes should have been submitted to the arbitrator but Michael refused. She also argued that Michael filed his motion to enforce the agreement when Erin was unavailable and that he improperly swore that the final papers accurately reflected the parties' agreement and arbitration awards. The court denied the motion to vacate, finding that there was no merit to Erin's argument that Michael acted improperly and that Erin's attorney could have but failed to demonstrate that the decree and property settlement did not match the parties' agreement and the arbitration awards. The court awarded Michael attorney fees of \$2937.50 for Erin's intransigence. Erin filed a notice of appeal of the order denying the motion to vacate. Her appeals were consolidated.

Erin assigns error to the trial court's rulings denying her motion to shorten time, denying her motion for a continuance of the hearing on Michael's motion to

enforce the settlement agreement, and denying her motion to vacate. She further assigns error to the order enforcing the CR 2A agreement, the court's findings of facts and conclusions of law, and the decree of dissolution. As she did below, Erin contends that there were serious irregularities, misconduct or surprise in the entry of the final papers and decree. She also contends that the court erred in finding that the separation contract attached to and incorporated into the decree accurately reflects the parties' agreement and the arbitration awards. She further contends that under the terms of the agreement, the parties were required to submit the remaining disputed issues to arbitration. And for the first time on appeal, Erin contends that the trial court lacked jurisdiction to enter Michael's proposed orders because under chapter 7.04A RCW, once the court found an enforceable agreement to arbitrate, the court's authority was limited to ordering the parties to arbitrate the dispute and the court could not refuse arbitration on the ground that the issues or claims subject to arbitration lack merit.<sup>1</sup> Finally, Erin contends that the trial court erred in awarding Michael attorney fees for responding to the motion to vacate.

The CR 2A stipulation and agreement provides:

**I. Understandings:** The parties to this proceeding understand and agree:

a. Legally Enforceable Agreement. The terms of this Stipulation constitute a legally binding agreement in full settlement of all claims encompassed within this document. They agree to seek court approval of it by such orders as are required to make it fully effective and enforceable.

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<sup>1</sup> Erin may raise the jurisdictional argument for the first time on appeal. RAP 2.5(a). Anderson v. Farmers Ins. Co., 83 Wn. App. 725, 730-31, 923 P.2d 713 (1996).

...  
**VII. Completion, Clarification and Dispute Resolution.** In the event of any disagreement or conflict in the terms of the Stipulation or the documents necessary for court approval of it, or of any omission or need for clarification of the Stipulation or the documents prepared based upon it, such matter shall be submitted to the Mediator, who shall then determine such matter by binding arbitration according to the rules in effect at the time such action is requested.

Both arbitration awards referred to the language in paragraph VII of the agreement, noting that the parties agreed the mediator “would serve as binding arbitrator of any disputes regarding or enforcing the CR[ ]2A Stipulation.” In addition, the terms in the agreement for the sale of the parties’ home specifically provided that disputes respecting the parties’ rights and obligations, the sale of the property, and distribution of the proceeds “shall be subject to binding arbitration by [the mediator/arbitrator] according to the rules of the Alternative Dispute Resolution Agreement, the Civil Rule 2A Stipulation in this matter, and the rules of the Arbitrator then in effect.”

Arbitration in Washington is a statutorily recognized special proceeding controlled by chapter 7.04A RCW, a statutory scheme that amounts to a code of arbitration. Price v. Farmers Ins. Co., 133 Wn.2d 490, 495, 946 P.2d 388 (1997). “Arbitration traces its existence and jurisdiction first to the parties’ contract and then to the arbitration statute itself,” and the parties’ rights are controlled by statute. Price, 133 Wn.2d at 496.

Michael contends that he and Erin did not agree to arbitration under

chapter 7.04A RCW because the arbitration clause in the agreement did not refer specifically to the statute. We disagree. RCW 7.04A.030(1)(a) states that the arbitration act applies to all agreements to arbitrate entered into after January 1, 2006. Michael cites no authority that the arbitration clause must refer specifically to chapter 7.04A RCW.

An agreement to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revocation of a contract. RCW 7.04A.060(1). There is no dispute here that the arbitration provision in the CR 2A stipulation and agreement is valid and enforceable. Indeed, the parties twice submitted disputed questions to binding arbitration.

Instead, Michael contends that he and Erin reached a binding agreement on the substantive issues and that the arbitrator's role was limited to drafting issues. The court decides whether a controversy is subject to an agreement to arbitrate. RCW 7.04A.060(2). The scope of the arbitrator's authority depends on the terms of the agreement to arbitrate. Barnett v. Hicks, 119 Wn.2d 151, 155, 829 P.2d 1087 (1992); Munsey v. Walla Walla College, 80 Wn. App. 92, 95, 906 P.2d 988 (1995). Thus, the superior court's authority was limited to determining whether the parties' bound themselves to arbitrate the particular dispute. This is so because "[i]f the dispute can fairly be said to involve an interpretation of the agreement, the inquiry is at an end and the proper interpretation is for the



arbitrator.” Munsey, 80 Wn. App. at 96 (quoting, Meat Cutters Local 494 v. Rosauer’s Super Markets, Inc., 29 Wn. App. 150, 154, 627 P.2d 1330 (1981)).

Here the language of the parties’ agreement to arbitrate is broad and unlimited, referring to “any disagreement or conflict in the terms of the stipulation or the documents necessary for court approval of it, or of any omission or need for clarification of the stipulation or the documents prepared based upon it.” And both arbitration awards referred to this language and set forth that the parties agreed the mediator “would serve as binding arbitrator of any disputes regarding or enforcing the CR 2A stipulation.”

After the arbitrator issued the second arbitration award, Michael prepared a draft agreement, but Erin took the position that in several respects the draft did not comport with the settlement agreement and arbitrator’s decision. Erin returned the papers to Michael with proposed revisions and a request to submit their respective drafts proposals to the arbitrator for a final decision. Michael refused and instead filed a motion to enforce the agreement. The trial court’s authority was limited to determining whether the parties’ bound themselves to arbitrate the particular dispute. Because the dispute involved interpretation of the agreement, the court’s inquiry was at an end and resolution of the disputes was for the arbitrator. As per the parties’ agreement, the disputes over the terms of the settlement must be submitted to the arbitrator. The trial court awarded Michael \$2,937.50 in attorney fees for responding to Erin’s motion to vacate. We reverse the award.

Both Erin and Michael seek an award of attorney fees on appeal under RCW 26.09.140 and for the opposing party's intransigence. We decline to award attorney fees on appeal.

We reverse the order granting Michael's motion to enforce the CR 2A agreement, vacate the findings of fact, conclusions of law and decree of dissolution, and remand for further proceedings consistent with this opinion.

Schindler, CT

WE CONCUR:

Appel, Jan, J.